

ERVIN J. CROWDER

IBLA 75-286

Decided May 30, 1975

Appeal from an order of Administrative Law Judge John R. Rampton, Jr., dismissing an appeal from the Malta District Manager's decision denying grazing privileges. M-1-74-1.

Reversed and remanded.

1. Grazing Permits and Licenses: Appeals -- Regulations: Applicability

While 43 CFR 4.470(b) bars subsequent challenge to "matters adjudicated" in a final decision of a District Manager when no appeal of that decision is undertaken, the presence or absence of excess forage in successive growing seasons is not a matter subject to this prohibition.

2. Appeals -- Grazing Permits and Licenses: Adjudication -- Grazing Permits and Licenses: Appeals

A decision by a District Manager denying a requested award of grazing privileges must state the reasons therefore, and not simply the conclusion that the applicant is not qualified.

APPEARANCES: Ervin J. Crowder, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ervin J. Crowder appeals from an order of Administrative Law Judge John R. Rampton, Jr., dated October 29, 1974, granting a motion by the Montana State Director, Bureau of Land Management, to dismiss appellant's appeal of a decision of the Malta District Manager. The decision of the Malta District Manager, dated July 31, 1974, denied Crowder's request for an award of grazing on the

grounds that "you do not meet the requirements of a qualified applicant and there are no excess Federal range grazing privileges available. You did not file an appeal from the District Manager's decision dated April 30, 1974, concerning this same matter. This is in accordance with 43 CFR 4113.1(d)(2) [sic]."

Judge Rampton ruled that "[i]nasmuch as the appellant has raised no new issues not previously determined by the District Manager's decision of April 30, 1974, and which became final when no appeal was filed, the appellants are now barred under the doctrine of res judicata. Further, the regulation 43 CFR 4.470(b) provides that any applicant who fails to appeal a decision of the District Manager within the time allowed shall be forever barred from challenging the matters adjudicated in the final decision." We reverse.

We agree with the Judge that under 43 CFR 4.470(b) an applicant who fails to timely appeal a decision of a District Manager is "barred thereafter from challenging the matters adjudicated in such final decision." The difficulty in the instant case is that it is virtually impossible to determine exactly what was adjudicated in the decision of April 30, 1974. The April 30 decision declared, in relevant part, "The reason for the rejection is that you do not meet the requirements of a qualified applicant and there are no excess Federal range grazing privileges available. This is in accordance with 43 CFR 4113.1(d)(2)." The cited regulation provides:

\* \* \* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

- (i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.
- (ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

Base properties dependent by use are class 1; base properties dependent by location are class 2.

[1] If the April 30 decision was a ruling that appellant was not a qualified applicant, the fact that there was no excess forage available in an irrelevancy. If, on the other hand, the decision was meant to be a ruling that appellant is not a qualified class 1 applicant and that there is no excess forage available to be awarded to him as a qualified class 2 applicant, we cannot see how the doctrine of res judicata, or rather its counterpart, the doctrine of administrative finality, can properly be invoked. The presence or absence of excess forage is a fact which will vary from growing season to growing season. We are unable to determine from the case file whether reductions of class 1 use have occurred such as would bring 43 CFR 4111.4-2 into play were the grazing capacity of the lands to be increased. In any event, excess forage determinations, capable of considerable change from growing season to growing season, are not subject to the prohibition of 43 CFR 4.470(b).

[2] Finally, we note with disapproval the failure, in either decision, to specify the reasons why the appellant was not deemed to be a qualified applicant. District Managers, in their decisions, have an obligation to indicate the reasoning behind their conclusions so that applicants are apprised of the precise nature of the deficiencies in their applications. By so doing, possible fruitless appeals could be avoided.

Accordingly, in the interests of clearly delineating the issues which may or may not be the subject of a hearing, we are remanding the case files to Judge Rampton with instructions that the Judge remand the case to the District Office to permit that office to more clearly delineate the reasoning underlying its decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the order of dismissal is reversed and the case files are remanded to the Administrative Law Judge for further action consistent herewith.

Douglas E. Henriques  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Joseph W. Goss  
Administrative Judge

